



JUN 17 2011

Dr. Andrew P. Roth  
President  
Notre Dame College of Ohio  
4545 College Road  
South Euclid, OH 44121-4293

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Dear Dr. Roth:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Notre Dame College of Ohio (NDC) a total of \$165,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on NDC's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses. 34 C.F.R. § 668.46(b)(2)(i). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically report on any crime that manifests evidence of a hate crime. 34 C.F.R. § 668.46(c). An institution must, in a manner that is timely and that will aid in the prevention of similar crimes, report to the campus community about such crimes, and about crimes considered by the institution to

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830 First Street, NE | Union Center Plaza III | Washington, DC 20002-8019

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represent a threat to its students and employees. 34 C.F.R. § 668.46(e). The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

In June 2006, Security On Campus, Inc. (SOC) submitted a complaint to the Department alleging that NDC had violated the Clery Act by failing to timely warn students and employees about two forcible sex offenses that were reported to the Dean of Student Development (Dean) in the fall of 2005. The complaint alleged that the perpetrator was the same individual believed to be an acquaintance of both victims. When the incidents were later reported to the campus police, a warning was issued to students on December 13, 2005. According to SOC, as a result of the warning, three additional complaints were brought forward against the suspect in December 2005, and one additional complaint was made in 2006.

In light of the SOC complaint, the Department conducted a program review at NDC from February 26, 2007 to March 2, 2007. The focus of the review was NDC's compliance with the Clery Act, specifically its timely warning policy requirements. The review consisted of an examination of NDC's catalog, policies, practices and procedures. In addition, the review team interviewed certain NDC staff members and local police. On May 1, 2008, the Department issued a Program Review Report to NDC. The review found that NDC had not complied with the Clery Act and with the Department's implementing regulations. NDC responded to the report on July 30, 2008. After reviewing NDC's response, the Department issued its Final Program Review Determination (FPRD) letter to NDC on March 12, 2010. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that NDC failed to properly issue timely warnings to its campus community regarding two forcible sex offenses, lacked a timely warning policy, and failed to accurately report campus crime statistics by omitting four (4) forcible sex offenses for the 2005 calendar year.

#### **NDC FAILED TO PROPERLY ISSUE TIMELY WARNINGS TO ITS CAMPUS COMMUNITY REGARDING TWO SEXUAL ASSAULT INCIDENTS**

The Department's regulations require that institutions participating in the Title IV, HEA programs must, in a manner that is timely and that will aid in the prevention of similar crimes, provide a timely warning to the campus if certain crimes are reported to campus security authorities and are considered to represent a threat to students and employees. 34 C.F.R. § 668.46(e). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically



report on any crime that manifests evidence of a hate crime. 34 C.F.R. § 668.46(c). The only exception to this requirement is if the crime is reported to a pastoral or professional counselor. 34 C.F.R § 668.46(e)(2).

NDC did not issue a timely warning to its students and staff after two sexual assault incidents were reported to the Dean in the fall of 2005. The Dean did not report the two sexual assault incidents to the NDC Police/Security Department until November 23, 2005, six weeks, and three weeks respectively from the date the victims reported the sexual assaults to the Dean. The NDC Police/Security Department issued a warning to the campus community on December 13, 2005. The Department has determined that NDC did not issue a timely warning to its campus community after the two sexual assault incidents, as required by the HEA and the Department's requirements.

On or about October 10, 2005, a female student (Student No. 1) sent a letter to the Dean alleging that an unnamed male student had sexually assaulted her four (4) weeks earlier in her dormitory. In her letter to the Dean, the student expressed her reluctance to have the incident reported to her parents, the police, or other school officials. In a letter dated October 13, 2005 to Student No. 1, the Dean acknowledged meeting with the victim to discuss the incident reported on October 10, 2005.

On or about October 31, 2005, another female student (Student No. 2) reported to a College official that a named male student had sexually assaulted her on October 29, 2005 in her dormitory room. The Dean responded in writing to Student No. 2 via a letter dated November 1, 2005, in which the Dean acknowledged that Student No. 2 had informed the Dean that the incident occurred on October 28, 2005, rather than October 29, 2005. In the same letter, the Dean indicated that she would honor the student's request that no legal or judicial action should be taken and that the student's parents would not be informed.

On or about November 23, 2005, the Dean verbally advised the NDC Police/Security Department that two students had informed her that they had been sexually assaulted. The Dean did not identify the victims or the assailant. On or about November 28, 2005, the Dean provided written notification to the NDC Police/Security Department that two students had informed her that they had been sexually assaulted. The Dean did not identify the victims or the assailant. On or about December 12, 2005, Student No. 1 contacted the NDC Police/Security Department and identified her assailant. The NDC Police/Security Department issued a warning to the campus community on December 13, 2005. On December 14, 2005, Student No. 2 contacted the NDC Police/Security Department and identified her assailant.

In its response to the PRR, NDC conceded that the Dean was a campus security authority. NDC contends that the Dean determined that no timely warning was in fact required for the two sexual assault incidents cited in the program review report because the Dean made the determination that the incidents did not represent a threat to students and employees.



However, NDC did not present any evidence demonstrating that the Dean had the authority to make that determination or considered making such a determination. NDC did not have an established policy on who would be responsible for deciding whether to issue a timely warning.

Moreover, even if the Dean had the authority to decide whether the institution should issue a timely warning, the institution did not have established standards for when a timely warning should be issued. As detailed in the FPRD, NDC's statement of policies on campus safety in effect during the fall of 2005 did not address the reporting of crimes occurring on campus. NDC did not have a timely warning policy setting forth the criteria that would have provided a standard for the Dean's conclusion that a warning was in fact not required. NDC has not provided any documentation substantiating either the determination or the basis upon which the decision against a timely warning was made. The NDC Police/Security Department issued a warning to the campus community on December 13, 2005 after the sexual assaults were finally reported to their office, indicating the officials primarily responsible for crime prevention disagreed with the Dean's apparently undocumented determination. The six-week and three-week delays in disclosure of these sexual assaults were inappropriate.

NDC concedes that there was never an official consideration of whether to issue a warning in regard to the two 2005 sexual assaults. NDC contends that the Dean made a determination that a warning was not warranted because the incidents did not represent a threat to students and employees. NDC clearly did not have established policies, procedures or standards to timely determine whether reported criminal offenses represent a threat to the campus community and, therefore, did not have a timely warning policy. Although NDC's response indicated that it has taken steps to improve its process for reporting crime incidents, the two Clery Act violations are serious and endangered the campus community. It is essential to students, employees, and the public that institutions provide timely warnings as frequently and systematically as needed to ensure the safety and well being of the campus community.

#### **NDC LACKED A TIMELY WARNING POLICY**

The Department's regulations require that participating institutions prepare an ASR that contains the institution's statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus; policies for making timely warning reports to members of the campus community regarding the occurrence of crimes; policies for preparing the annual disclosure of crime statistics, and a list of the titles of each person or organization to whom students and employees should report criminal offenses for the purpose of making timely warning reports and annual statistical disclosure. 34 C.F.R 668.46(b)(2).

NDC's statement of policies on campus safety in effect during the fall of 2005 lacked critical information required by the Department's regulations. The statement did not explain the college's policies regarding timely warning to the campus community, the title of each person or organization to whom criminal offenses should be reported for



purposes of early warning to the campus community, the designation of a person or organization responsible for determining whether an early warning should be issued, and the obligation of each campus security authority to refer reported criminal offenses to the campus police or security department as required by 34 C.F.R. § 668.46(b)(2). NDC has since revised its policies and procedures, and its statement regarding campus safety to address policies previously omitted. However, the efforts do not excuse NDC's failure to have a policy for providing timely warning to students and employees in the fall of 2005, as required by the Clery Act and the Department's regulations.

### **NDC FAILED TO REPORT FOUR (4) FORCIBLE SEX OFFENSES IN ITS 2005 CRIME STATISTICS**

The HEA and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and publish for the three most recent calendar years, accurate and complete campus crime statistics to inform current and prospective students and employees of important information about safety and security on campus. 34 C.F.R. § 668.46(c)(1). These statistics must include incidents of forcible sex offenses that are reported to local police agencies or to a campus security authority. 34 C.F.R. § 668.46(c)(1)(ii). An institution must include a crime in the statistics in its ASR for the calendar year in which the crime was reported to a campus security authority. 34 C.F.R. § 668.46(c)(2). The statistical report must be distributed to the students and employees as part of the ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit that information. 34 C.F.R. §§ 668.41(e)(1) – (e)(5).

NDC did not provide accurate crime statistics to its students and employees via the ASR and failed to meet its obligations under the Clery Act and the Department's regulations. Specifically, NDC has acknowledged that for the 2005 calendar year, the crime statistics for forcible sex offenses originally reported to the Department in the annual campus crime report were incorrect. NDC concurs with the determination in the FPRD that NDC should have reported five forcible sex offenses for the 2005 calendar year instead of the one forcible sex offense originally reported in the 2005 calendar year campus crime report, and on the college's website.

NDC under-reported forcible sex offenses for the 2005 calendar year by failing to include four more crimes in that category. NDC contends that when the error was identified, NDC promptly amended the information in the campus crime report for the 2005 calendar year to reflect five forcible sex crimes. The FPRD determined that NDC amended the information in the annual campus crime report for the 2005 calendar year to reflect five forcible sex offenses. This information is provided on the College's Website.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. NDC's correction of the crime statistics one



or two years after the original issuance of the report does not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

## II.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for NDC is 2008-2009 award year. According to the Department records, NDC received approximately \$1,319,089 in Federal Pell Grant funds; approximately \$11,341,808 in Federal Family Educational Loan (FFEL) funds and approximately \$188,336 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,111,434; for institutions participating in the FFEL and/or the William D. Ford Federal Direct Loan programs, the median funding level is \$2,971,547, and for institutions participating in the Campus-Based programs, the median funding level is \$274,347. Accordingly, NDC is a large institution because its funding levels for Pell Grant and FFEL funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at NDC are very serious and numerous. These failures have endangered NDC's students and employees who must be able to rely on the timely warning of serious crimes, disclosures of campus crime policies and statements, and the accurate reporting of crime and statistics in order to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and NDC's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for the second sexual assault incident for which NDC failed to issue a timely warning to its campus community in 2005. The intent of the timely warning requirement is to provide information to enable members of the campus community to protect themselves. In this case, barely a month after the first victim wrote a letter to the Dean reporting that she had been sexually assaulted, a second sexual assault was reported to a College official on October 31, 2005. The occurrence of two similar crimes within a short period of time was certainly evidence that the crimes were a threat to students and employees. It was very clear that members of the campus community needed to take precaution and protect themselves. However, the institution has not provided any evidence to suggest it even considered such a warning or that it had standards or procedures to make such a decision. Failure to issue a timely warning after two sexual assault incidents were reported within a month was an egregious violation, which endangered the entire campus community. The violation is compounded by the Dean's

six-week and three-week delays in reporting the sexual assault incidents to the NDC Police/Security Department.

I have assessed \$27,500 for NDC's failure to have a timely warning policy to inform students and employees of reported crimes that may represent a threat. I have assessed \$27,500 for each of the four forcible sex offenses that were not included in NDC's crime statistics for the 2005 calendar year. This is a serious violation because current and prospective students/employees must be able to rely on accurate and complete campus crime information.

The fine of \$165,000 will be imposed on July 7, 2011, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. NDC may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If NDC chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Program Compliance  
830 First Street, NE – UCP-3, Room 84F2  
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of NDC's case to a hearing official who will conduct an independent hearing. NDC is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If NDC does not request a hearing but submits written material instead, I will consider that material and notify NDC of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT NDC SUBMITS MUST BE RECEIVED BY JULY 7, 2011; OTHERWISE, THE \$165,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of NDC's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684

Sincerely,



Mary E. Gust, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosure